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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	92044624
Party	Defendant The Brand Experience LLC
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Date	12/13/2007
Attachments	CancellationAnswer.pdf (7 pages)(764895 bytes) Exhibit A.pdf (1 page)(75329 bytes) Exhibit H.pdf (1 page)(299802 bytes) Exhibit I.pdf (1 page)(141018 bytes)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

J. CHRISTOPHER CARNOVALE

Petitioner

Cancellation Case. No. 92044624

THE BRAND EXPERIENCE LLC

Registrant

ANSWER TO PETITION

Registrant The Brand Experience LLC ("Registrant"), answers the Petition to Cancel Trademark Registration No. 2,384,600; 2,477,694; and 2,593,603 (the "Petition") filed by J. Christopher Carnovale ("Petitioner") and states as follows:

INTRODUCTION

The registrant has made high profile, and continuous use of the marks reflected in Registrations No. 2,384,600, 2,477,694, and 2,593,603 since their first use in the USA. These Marks have been promoted nationally in the USA through major national publications, television programs, a joint education program with a National Medical Association, and Trade Shows to name just a few venues in which the Registrant has invested. Any active competitor in the "sun protective apparel market space" would have noticed and been aware of Registrant's active use of these Marks prior to June 17, 2004, which is the date that petitioner filed a trademark application with the USPTO.

REPLIES TO SPECIFIC ALLEGATIONS

1. Registrant is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 1, and therefore denies each and every allegation.
2. Registrant is without knowledge or information sufficient to form a belief as to the

truth of the allegations set forth in Paragraph 2, and therefore denies each and every allegation.

3. Registrant is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 3, and therefore denies each and every allegation.

4. Registrant is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 4, and therefore denies each and every allegation.

5. Registrant admits that the Petitioner has filed Appl. S/N 76/599,475 for the mark THE SUNSCREEN THAT NEVER WEARS OFF! with the U.S. Patent and Trademark Office. Registrant denies that the Petitioner is entitled to registration of that mark.

6. Registrant admits that Registrant has obtained Registration No. 2,477,694 for THE SUNSCREEN THAT WON'T RUB OFF, Registration No. 2,384,600 for THE 50+ SUNSCREEN THAT WON'T RUB OFF , and Registration No. 2593603 for SUNSCREEN KIDS WANT TO WEAR, except that Registrant avers that Petitioner did not, in fact, have prior rights in the mark THE SUNSCREEN THAT NEVER WEARS OFF! at the time Registrant filed for registration of the marks that are the subject of this proceeding.

7. Registrant admits the allegations of Paragraph 7.

8. Registrant admits that Registrant made no use of the marks THE SUNSCREEN THAT WON'T RUB OFF, THE 50+ SUNSCREEN THAT WON'T RUB OFF , and SUNSCREEN KIDS WANT TO WEAR in interstate commerce prior to May 28, 1998.

9. Registrant denies the allegations of Paragraph 9 and further avers that Petitioner did not, in fact, have prior rights in the mark THE SUNSCREEN THAT NEVER WEARS OFF! at the time Registrant filed for registration of the marks that are the subject of this proceeding.

10. Registrant is without knowledge or information sufficient to form a belief as to the

truth of the allegations set forth in Paragraph 10, and therefore denies each and every allegation.

11. Registrant admits that the mark THE SUNSCREEN THAT NEVER WEARS OFF! resembles Registrant's marks THE SUNSCREEN THAT WON'T RUB OFF and THE 50+ SUNSCREEN THAT WON'T RUB OFF. Registrant denies that the mark THE SUNSCREEN THAT NEVER WEARS OFF! resembles Registrant's mark SUNSCREEN KIDS WANT TO WEAR. To the extent that any other allegations of this paragraph are deemed to require a response, Registrant denies such allegations.

12. Registrant denies the allegations of Paragraph 12.

13. Registrant admits the allegations of Paragraph 13, except that Registrant avers that the Registrant is under no obligation to obtain the Petitioner's permission to use its marks.

14. Registrant admits that Petitioner's goods and those of the Registrant's are similar. To the extent that any other allegations of this paragraph are deemed to require a response, Registrant denies such allegations.

15. Registrant denies the allegations of Paragraph 15.

16. Registrant admits that Petitioner was denied registration of the mark THE SUNSCREEN THAT NEVER WEARS OFF! on the grounds that it is confusingly similar to the marks in Registrant's Registration No. 2,384,600; 2,477,694; and 2,593,603. To the extent that any other allegations of this paragraph are deemed to require a response, Registrant denies such allegations.

17. Registrant denies the allegations of Paragraph 17 and further avers that Registrant has used the marks THE SUNSCREEN THAT WON'T RUB OFF, THE 50+ SUNSCREEN THAT WON'T RUB OFF , and SUNSCREEN KIDS WANT TO WEAR continuously in

interstate commerce since May 28, 1998. Examples of Registrants use of its marks in interstate commerce is attached to this Answer as Exhibits A, H, and I. Exhibit A displays a promotion for the SUNSCREEN THAT WON'T RUB OFF which appeared in the May 1999 Issue of Better Homes & Gardens, at the time the 4th largest circulated Magazine in the USA with a readership of 32 million readers. The registrant's name and toll free number are listed. Exhibit H and I show the use of the Registrants marks in Registrant's current product catalog. The edition of the catalog shown has been continuously in print since 2005.

18. Registrant denies the allegations of Paragraph 18.

19. Registrant admits that Petitioner was denied registration of the mark THE SUNSCREEN THAT NEVER WEARS OFF! on the grounds that it is confusingly similar to the marks in Registrant's Registration No. 2,384,600; 2,477,694; and 2,593,603. To the extent that any other allegations of this paragraph are deemed to require a response, Registrant denies such allegations.

20. Registrant denies the allegations of Paragraph 20.

AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE

Petitioner's Petition should be dismissed in whole or in part for failing to state a claim upon which relief can be granted.

SECOND AFFIRMATIVE DEFENSE

Petitioner's Petition should be dismissed in whole or in part because Petitioner is guilty of unclean hands.

THIRD AFFIRMATIVE DEFENSE

Petitioner's Petition should be dismissed in whole or in part pursuant to the doctrine of estoppel.

FOURTH AFFIRMATIVE DEFENSE

Petitioner's Petition should be dismissed in whole or in part pursuant to the doctrine of laches.

FIFTH AFFIRMATIVE DEFENSE

Petitioner's Petition should be dismissed in whole or in part pursuant to the doctrine of waiver.

SIXTH AFFIRMATIVE DEFENSE

Petitioner's Petition should be dismissed in whole or in part under one or more applicable statutes of limitations.

SEVENTH AFFIRMATIVE DEFENSE

Petitioner's Petition should be dismissed in whole or in part under because there is no likelihood of confusion between the marks SUNSCREEN KIDS WANT TO WEAR and THE SUNSCREEN

THAT NEVER WEARS OFF!

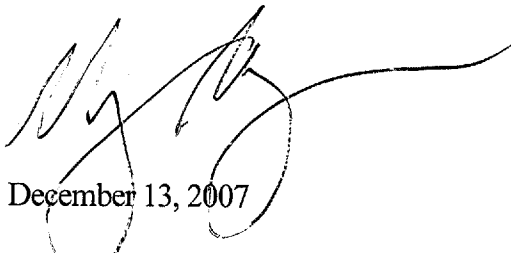
EIGHTH AFFIRMATIVE DEFENSE

Restrant hereby reserves the right to amend this Answer to Petitioner's Petition to incorporate and plead any additional defenses that may arise and become relevant during this cancellation proceeding.

WHEREFORE, The Registrant THE BRAND EXPERIENCE, LLC respectfully prays that this Board grant the following relief:

- i. That the Petition be dismissed with prejudice, and
- iii. A ny other relief this Board deems fair and equitable.

Respectfully Submitted,



December 13, 2007

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Facsimile: 407-420-5909
Email: harperw@gtlaw.com

Attorney for the Registrant

CERTIFICATE OF SERVICE

I, Wayne V. Harper, hereby certify that two true and correct copies of the of the ANSWER TO PETITION has been served on the Attorney of Record for Petitioner on December 13, 2007 in the manner designated.

By Express Mail to:

Michael A. Grow,
Arent Fox LLP
1050 Connecticut Avenue N.W.,
Washington, DC 20036

and by email to:

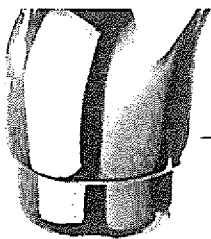
grow.michael@arentfox.com

Respectfully Submitted,

A handwritten signature in black ink, appearing to be 'GT' followed by a long horizontal flourish.

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Attorney for the Registrant



healthupdate

NEWS THAT WORKS FOR YOU

by Nina Elder

Bottled Water Lovers: Are You Getting Enough Fluoride?

Adults and children who drink only bottled water might be putting their teeth at risk.

Filters that many bottlers use to remove chlorine and other chemicals to improve taste also remove fluoride. Children need fluoride for strong, cavity-resistant teeth, and adults who don't get enough fluoride are at higher risk for cavities along the roots. As people age, gums recede, exposing roots that are susceptible to decay.

Conversely, you may be getting too much of the compound if you drink a lot of bottled water that contains added fluoride and you live in an area with fluoridated tap water. Too much fluoride can cause fluorosis, or a brown flaking of the teeth. To reduce your risk, call your water department to find out if your tap water is fluoridated. Also, check the label of your favorite bottled water. If fluoride is added, it is listed on the label, says the International Bottled Water Association.

Sunscreen that won't rub off.

This swimsuit is like wearing SPF 50+ sunscreen but is a whole lot easier to put on. The nylon/lycra fabric dries fast and keeps kids cool. Boys and girls sizes 2 to 10, and two hat styles.

Cost: \$24-\$36. Call SunSafe toll free at 877/786-7233.



Good News for Ex-Smokers

Quitting smoking may not be easy, but kicking the habit has long-lasting positive effects on your health. If you've quit, these findings from the Centers for Disease Control and Prevention will give you plenty of reasons to pat yourself on the back.

- After 15 years without a smoke, an ex-smoker's risk of death is almost the same as people who have never smoked.
- Ex-smokers cut their risk for lung cancer in half 10 years after quitting.
- Fifteen years after quitting, the risk of heart disease in an ex-smoker is similar to that of a nonsmoker.
- After 5 to 15 years, the risk of stroke for ex-smokers is about the same as nonsmokers.

continued on page 128

Exhibit

A



SUNSAFE®

The Sunscreen That Won't Rub Off®

Protect your young beauties

Wear our hat in
the water!

4" brim for
maximum protection

The SunSafe® Beautiful Bucket
Hat page 12

The SunSafe® Great Sun Escape
AquaShirt page 13

The Best AquaShirt Ever page 16



Light, fast drying
fabric keeps you
cool, comfortable &
protected all day!

See a greater selection
at www.sunsafe.com

SUNSAFE®
1521 ALTON ROAD, #8
MIAMI BEACH, FL 33139

Shop online at sunsafe.com Call anytime 1-800-786-7233

PRESORT
STANDARD
U.S. POSTAGE
PAID
SUNSAFE

Exhibit

H.

SunSafe® is designed and made in the USA.

The Sunscreen kids want to wear®



Exhibit
I.



SunSafe® Kids' Ultimate AquaPants

You can't find better leg protection from the sun's harmful rays – especially the back. Team them up with our Ultimate AquaShirt® for maximum protection. Lightweight and fast drying. FABRIC: SUNSAFE® 50+UPF AQUA®, FOUR-WAY STRETCH FOR ULTIMATE COMFORT. MADE IN USA. COLOR: ROYAL, BLACK. SIZE: 2, 4, 6, 8, 10, 12, 14. #P01-L, \$28.00

SunSafe® Kids' Ultimate AquaShirt

Shield your precious ones in maximum protection from neck to waist, and relax in the knowledge that every batch of our fabric is tested to meet our rigorous standards. Great in and out of the water. Team it up with an existing suit or our SwimPants. FABRIC: SUNSAFE® 50+UPF AQUA®. COLOR: WHITE, ROYAL/CAPRI, FLORAL. SIZE: 2, 4, 6, 8, 10, 12, 14. #L01, \$36.00

The SunSafe® Kids' Legionnaire Hat

Our over-sized, protective bill and neck drape help keep the sun away from little faces, ears, and necks. Lightweight and dries quickly. Great both in and out of the water. *Please remember that for maximum protection from reflected light, sunscreen should be applied to exposed skin.* FABRIC: SUNSAFE® 50+ UPF AQUA®. COLOR: FLORAL, ROYAL (SEE PAGE 27), CAPRI (SEE PAGE 28) SIZE: SMALL (FITS 9 MONTHS TO 3 YEARS. INCLUDES TIE), LARGE (FITS AGES 3 AND UP). #H01, \$20.00



SunSafe® It's A Wrap Sarong

Did you know your children's thighs are particularly vulnerable to sun damage? Keep them protected in this adorable piece, and while you are at it – get one for yourself. Comfortable, lightweight and quick drying. FABRIC: SUNSAFE® 50+UPF AQUALITE®, WITH FOUR-WAY STRETCH. MADE IN USA. MACHINE WASHABLE. COLORS: FLORAL, BLACK. KIDS' SIZE: SMALL. ADULT SIZES: MED, LG. #KLS, \$38.00